

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

NO PROTEST

Release copies to District

Date [REDACTED]

Contact Person: [REDACTED] Surname [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

EIN: [REDACTED]
KD: [REDACTED]

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(5) of the Internal Revenue Code.

We have considered the information you have submitted and have concluded that you do not qualify for recognition of exemption under section 501(c)(5) of the Code because you are a feeder organization within the meaning of section 504.

The information you have submitted indicates that you were established to promote member [REDACTED] and to encourage and develop cultural, social, charitable and other beneficial activities among your members; to further the best interests of the organized labor movement; and to participate in endeavors that will best serve the interests of the organized labor movement. Your membership consists of all local unions that are members in good standing of the [REDACTED].

Your sole source of income is from the sale of advertising space in the [REDACTED]. You describe this publication as a complete and official directory of your affiliated unions and a source of informational encouragement to companies to choose union labor and encouraging your affiliated members to choose to do business with the advertisers who are supportive of your union efforts. You also make distributions to your legislative office which provides lobbying services for you regarding various labor related problems.

You describe the directory as a compilation of a wide array of information furnished to the Association's members about union activities and goals as well as commercial information and support. However, the [REDACTED] copy of the directory which was submitted with your application contains a one page listing of your officers; a two page listing thanking your advertisers and subscribers, listing the affiliated local unions and district councils and providing an alphabetical list of the locals; and [REDACTED] pages of advertisements and an index of the advertisers. These advertisements run the gamut from full page ads to pages

Re: [REDACTED]

reproducing several business cards. The advertisers in the directory include building companies, real estate companies, life insurance companies, lawyers and numerous other products and businesses. Some of the purchased space is merely complimentary. However, it is clear that the bulk of this directory is commercial advertising and that many advertisers have nothing to do with the [REDACTED]

The financial information you have submitted indicates that you have made contributions to the [REDACTED] and have occasionally purchased tickets to political dinners and similar events. It also appears that you have made a limited amount of charitable contributions.

Your contract with the publisher of your directory indicates that the publisher receives [REDACTED] percent of the receipts and you receive the remaining [REDACTED] percent.

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that labor organizations contemplated by section 501(c)(5) of the Code are those which have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

In American College of Physicians v United States, 475 U.S. 834, 106 S Ct 1591 (1986), the Supreme Court of the United States held that the publication of paid advertising in a monthly medical journal is not substantially related to the educational purposes of the journal and the profits from advertising are unrelated business taxable income. The Supreme Court found that "Congress has declared unambiguously that the publication of paid advertising is a trade or business activity distinct from the publication of accompanying educational articles and editorial comment." Further, section 513(c) clearly establishes advertising as a trade or business.

Portland Cooperative Labor Temple Association v. Commissioner, 39 B.T.A. 450 (1939), acq., 1939-1 C.B. 28, provides that an organization may qualify for exemption as a labor organization within the meaning of section 501(c)(5) if its activities are appropriate union activities and are conducted as a part of the proper activities of the parent labor organization, so that it is not merely an independent undertaking.

Re: [REDACTED]

The revenue ruling noted that even though the advertising in the case is directed specifically to members of the legal profession, it is still commercial in nature and represents an effort on the part of the advertisers to maximize sales.

Rev. Rul. 79-370, 1979-2 C.B. 238 holds that the sale of a membership directory that contributes importantly to the achievement of the organization's purpose and confers no private commercial benefit on any of the members who are the directory's sole purchasers, does not constitute unrelated trade or business within the meaning of section 513.

Rev. Rul. 68-534, 1968-2 C.B. 217 provides that an organization engaged solely in publishing a newspaper containing only matters concerning union activities is exempt under section 501(c)(5) of the Code.

Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 1.502-1(a) of the Regulations provides that in the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 on the ground that all the profits of such organization are payable to one or more organizations exempt from taxation under section 501. In determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

The information you have submitted indicates that your primary purpose is to enter into a contract with a publishing company to print a publication for you. You in turn contribute the funds raised under this contract to the [REDACTED]. This publication, referred to in your application as a [REDACTED], is primarily a compilation of paid advertisements and listings from various companies, and other organizations. The majority of the listed advertisers are companies which provide supplies or services to the individual members of your participating locals. However, numerous advertisements are typical advertisements for restaurants or products.

Section 501(c)(5) of the Code exempts from federal income tax labor organizations which have as their objects the betterment of the conditions of those engaged in such pursuits,

Re: [REDACTED]

the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. In Portland Cooperative Labor Temple Association v. Commissioner, supra, the Court held that an organization may qualify for exemption as a labor organization if its activities are appropriate union activities and are conducted as a part of the proper activities of the parent labor organization. The Service has recognized that publishing a newspaper that furnishes information to members about union activities and goals is a proper function of a labor union and directly furthers its purpose. See Rev. Rul. 68-534, supra. Similarly, the Service has recognized that publishing a directory that contributes importantly to the achievement of the organization's purpose may be a qualifying activity of an exempt organization. Rev. Rul. 79-370, supra.

On the other hand, the Courts and the Service have recognized that the sale of advertising is a trade or business even if the advertising is pertinent to the industry or profession the publication is aimed at. See American College of Physicians v United States, supra and Rev. Rul. 82-139, supra.

The information you have submitted indicates that your primary activity involves the publication of your directory. This publication is almost entirely made up of advertising spots. Your activities do not better the working conditions of your member, improve the grade of their products, or develop a higher degree of efficiency in your members respective occupations. Rather they merely raise money which is contributed to other organizations which are presumably carrying on good labor activities. Therefore, we have concluded you are primarily organized and operated to carry on in some manner what would be considered an unrelated trade or business if you otherwise qualified for exemption. Accordingly, we have concluded that you do not qualify as an organization described in section 501(c)(5) of the Code.

The fact that you contribute substantially all of the income you receive to the [REDACTED], arguably a section 501(c)(5) organization, does not mean that you qualify for exemption under section 501(c)(5). Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Accordingly, as stated above, we have concluded that you do not qualify for recognition of exemption under section 501(c)(5) of the Code.

Re: [REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

Sincerely,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED][REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]